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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/682,177	07/31/2001	Carlos A. Aguilar	0112701-191	9016
29157	7590	10/24/2003		
BELL, BOYD & LLOYD LLC P. O. BOX 1135 CHICAGO, IL 60690-1135			EXAMINER MADSEN, ROBERT A	
			ART UNIT 1761	PAPER NUMBER

DATE MAILED: 10/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Applicati n No.

09/682,177

Applicant(s)

AGUILAR ET AL.

Examin r

Robert Madsen

Art Unit

1761

-- Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) 20-24 and 31-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19,25-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. Applicant asserts Group I (claims 1-14, 25-30 ) and Group II (15-19) should be examined together since the groups both teach a two-compartment pet food tray and differ only in the hinged feature of claims 9,14,27 and 30.

Consequently, Applicant has elected Groups I and II for examination. Examiner agrees to examine Groups I and II, including hinge related claims of 9,14,27, and 30. The requirement is now deemed proper and is therefore made FINAL.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1,3,5,8-10,13,15,29,30 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Lepper (US 3137272).

4. Note the second/wet food is water, a "unit" is a single piece of dry food as shown in the Figures, the dry pet food has a surface adapted to hold some water since it is "wetted", and a lid for the dry compartment is item 25. See Figures,

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Column 1, lines 8-17,50-55,63-69, Column 2, lines 14-28,38-54, Column 3, lines 1-14,28-40, and column 3, line 64 to Column 4, line 12).

5. Claims 1,3,5,8,9, 29,30 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Zarski (US 5947056)

6. Note the second/wet food is water or milk, a "unit" is a single piece of dry food as shown in the Figures, and a resalable lid included with the container is item 48. See column 3 lines 6-45, column 4, lines 6-17,49-64, column 5, line53 to column 6, line 17.

7. Claims 1,5,8-11,13,14,29,30 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by King et al. (US 5752464)

8. Note the second/wet food is water ,and the "crease" is item 18. See Abstract, Figures, Column 1, line 49 to Column 2, line 17, and Column 2, lines 49-67.

9. Claims 1-3,5,8,10,11,13,15,17 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Schommer et al. (US 5887749).

10. Regarding claims 1, 5,8,10,11,13,17, see Abstract, Figures, Column 1, lines 15-64,Column 2, lines 8-20,Column 3, lines 30-64, Column 6, lines 5-19.

11. Regarding claims 2 and 3, Schommer et al. teach dry food (e.g. item 40) and pet treats(item 30) separately contained in packaged order (Column 1 lines 30-35, Column 2, lines 8-15,Column 4, lines 8-13, and Figures)

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12. Regarding claim 15, Schommer et al. teach the wet food may be added to the dry food, and thus the dry food has a surface adapted to hold a quantity of wet food (Column 3, lines 60-64).

13. Claims 1,5,25, are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Smith (US 4006820).

14. Note that the second/wet food is water and the removable divider is item 14 (Abstract, Figures, Column 1, lines 5-19, Column 2, lines 9-27).

15. Claims 25,26,28 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Sobky (US 4249483).

16. See Abstracts, Figures Column 2, lines 26-40.

17. Claims 1, 5,8-11,13, 25,29,30 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Pyridie (US 6443096 B1).

18. Note the second/wet food is water, which may or may not be in a canteen, and lid may be included on a bowl in a closed position, which would provide a divider. Abstract, Figures, Column 1, lines 10-52, Column 2, lines 1-25, Column 2, lines 45-67, Column 3, lines 40 to Column 4, line 2.

19. Claims 1,3,5,10,11, 14-16, 29,30 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Ciguere (US 6568347 B2).

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20. Regarding claims 1,2,3,5,10,11, 15,16, 29,30 note the second/wet food is water, the dry pet food has a surface adapted to hold some water since the dry food is mixed with the water, and a "unit" is a pellet of dry food (Abstract, Figures Column 2, line 36 to Column 3, line 40).

21. Regarding claim 14, the "crease" in the flexible strip is shown in Figure 3 and described in Column 3, lines 7-11.

***Claim Rejections - 35 USC § 103***

22. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

23. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schommer et al. (US 5887749) as applied to Claims 1-3,5,8,10,11,13,15,17 above.

24. Regarding claim 4, Schommer et al. teach a wet pet food that is intended for blending with a dry food, but is silent in teaching a cream paste. However, once it was known to package a wet pet food and a dry pet food together, for the intention of blending the two foods together, selecting any conventional wet pet food that is used for mixing with a dry food, such as a cream paste, would have been an obvious matter of choice.

25. Claims 6 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schommer et al. (US 5887749) as applied to Claims 1-3,5,8,10,11,13,15,17 above, further in view of Lasater et al. (US 5200218).

26. Schommer et al. teach pet treats, but are silent in teaching the pet treats include functional foods. Lasater et al. are relied on as evidence of the conventionality of including dietary supplements in pet treats so that a pet can be encouraged to consume nutrients that are not normally appetizing to the pet (Column 1, lines 10-20,58-68, Column 2, lines 1-9). Therefore, it would have been obvious to modify Schommer et al. and include pet treats that are functional foods since this is a notoriously well known method of providing pets with necessary nutrients in a more appetizing form.

27. Claims 7 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schommer et al. (US 5887749) as applied to Claims 1-3,5,8,10,11,13,15,17 above.

28. Schommer et al. teach two wet foods, wherein the wet food compartment for unpackaged wet food, such as water, is taken to be compartment 20, after a canned wet food is removed from compartment 20 and dispensed into a dry compartment 40, which would result in a second wet food and second wet food compartment, as recited in claims 7 and 19. Schommer et al. also teach the tray may optionally include pet treats (i.e. in compartment 30 in Column 4, lines 10-13), in addition to dry food and wet food (Column 1, lines 29-35, Column 2, lines 8-20, Column 6, lines 5-19, and Figures ). Schommer et al. are silent in teaching

the two wet food compartments in combination with a dry food compartment per se. However, it would have been an obvious matter of choice, depending on the desired types of pet food desired, to have two wet food compartments and a dry food compartment, since Schommer et al. teach one compartment holds water (e.g. item 20), one compartment holds wet food dispensed from a can (e.g. item 40) and mixed with dry food, and one compartment (e.g. item 30) may optionally include pet treats.

29. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schommer et al. (US 5887749) as applied to Claims 1-3,5,8,10,11,13,15,17 above, further in view of Morgan (WO 9925205).

30. Regarding claim 18, Schommer et al. teach pet treats, but is silent in teaching a spoon shape. Morgan teaches it is sometimes difficult to remove pet food from a container and teaches including an edible utensil, such as a spoon, made from animal skin or food stuff molding, which are conventional pet food treat ingredients, in a pet food package to assist the pet owner in removing the food from the package. Additionally, the spoon may include supplemental nutrients (Derwent Abstract and WO Abstract). Therefore, it would have been obvious to include the edible spoon of Morgan in the package of Schommer et al. since it would assist in feeding the animal and may include supplemental nutrients, and one would have been substituting one dry food pet treat for another in a pet food package.

31. Claims 25,26,28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kornacki (US 5925390) in view of Sobky (US 4249483).

32. Regarding claims 25, 26, 28, Kornacki , teaches pet food trays comprising a number of different compartments with lids wherein a wet pet food, water, is placed in a compartment after a pet food has been removed or in the center of the tray. ( Column 1, lines 48 to Column 2, line 45, Column 3, line 55 to Column 4, line 4). However, Kornacki is silent in teaching removable dividers that divide a compartment into a first and second pet food, the tray defines multi-food compartments that receive the dividers as recited in claim 26, and the dividers form at least three sub compartments, as recited in claim 28.

33. Sobky also teaches pet food trays with water wherein the water may be added either in a compartment adjacent a food compartment or along with a dry food product in a compartment by providing a removable divider, and more than three, as recited in claim 28, to create a plurality of multi food containers, as recited in claim 26 (Abstract, item 14 in the Figures, Column 2, lines 26-40).

34. Therefore, it would have been obvious to provide the removable dividers in the tray of Kornacki since one would have been substituting one means for including water, a second food product, with a first pet food in tray for another.

35. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kornacki (US 5925390) in view of Sobky (US 4249483), as applied to claims 25,26, and 28 above, further in view of Bunz (US 1576088).

36. Kornacki is silent in teaching one multi-compartment may be folded onto another via a hinge. Bunz, who also teaches the same geometrically shaped food tray as Kornacki, teaches perforations between compartments, which would also serve as a hinge for folding, provide a means of selecting a desired compartment without disturbing the other compartments (Page 1, lines 10-21, Page 2, lines 1-45, Figures).

37. Therefore, it would have been obvious to provide the modified tray of Kornacki with a hinge for folding since this would allow one to separate a desired portion of the tray without disturbing the remain portions. One would have been substituting one compartmented circular tray design for another.

### ***Conclusion***

38. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure Rousset (GB 1053868) teaches tray compartments connected by a hinge for the purpose of folding one compartment onto the other for mixing. Dockerty (GB 2285791) teaches a tray with a removable divider for mixing two separately stored components held within the tray.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax

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phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.

Robert Madsen  
Examiner  
Art Unit 1761



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